

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TIME INC., HEARST CORPORATION, ADVANCE
MAGAZINE PUBLISHERS INC., AMERICAN
MEDIA, INC., HACHETTE FILIPACCHI MEDIA
U.S., INC., THE McGRAW-HILL COMPANIES,
INC., NEWSWEEK, INC., SOURCE INTERLINK
MAGAZINES, LLC, REED BUSINESS
INFORMATION, A DIVISION OF REED
ELSEVIER INC., VARIETY, INC., REED
ELSEVIER PROPERTIES INC., BONNIER
CORPORATION, ZIFF DAVIS PUBLISHING
HOLDINGS INC., FORBES LLC, REIMAN MEDIA
GROUP, INC., RD LARGE EDITION, INC., HOME
SERVICE PUBLICATIONS, INC. and READER'S
DIGEST LATINOAMERICA SA,

x
08 Civ. 7392 (WHP)

ECF CASE

Plaintiffs,

- against -

DARREN ANDREW BUDD, SALVEO LIMITED,
CYBERNET COMMUNICATIONS, INC.,
SWITCHWORKS TECHNOLOGIES, INC.;
HAMIDULLA GHUMAL ABBAS, YOAV
SCHWARTZ, RICK ROSS and JOHN DOES 1-20,

Defendants.

x

**DECLARATION OF PAUL A. LEE IN SUPPORT OF PLAINTIFFS' MOTION
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I, PAUL A. LEE, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Special Counsel – Trademarks and Assistant Secretary at Time Inc. (“Time”), one of the magazine publisher-plaintiffs in the above-captioned infringement action. I have been with Time since July 1, 2008. Prior to that time, for more than 15 years, I worked at Time Warner Inc., the parent company of Time, and was responsible for, among other things, Time trademark matters. I am fully familiar with the facts and circumstances stated herein.

2. I submit this declaration in support of plaintiffs' application, by order to show cause, for a temporary restraining order and preliminary injunction enjoining and restraining defendants Darren Andrew Budd (“Budd”), Salveo Limited (“Salveo”), Cybernet

Communications, Inc. (“Cybernet”), Switchworks Technologies, Inc. (“Switchworks”), Hamidulla Ghumal Abbas (“Abbas”), Yoav Schwartz (“Schwartz”), Rick Ross (“Ross”) and John Does 1-20 (collectively, “defendants”) from wholesale and blatant infringement of plaintiffs’ copyrights, trademarks and trade dress in our well-known magazines on a website known as Mygazines.com (the “Infringing Website”), and from inducing and encouraging the users of that Website to upload our copyrighted content in violation of law.

3. Time owns trademark rights in the titles of its magazines. Specifically, Time holds the following trademark registrations for its magazines:

(a) BUSINESS 2.0 is registered under Reg. No. 2615623 in International Class 16 for “Magazines in the fields of business, commerce and technology” and in International Class 35 for “Providing information in the fields of business and commerce by means of a global computer network”;

(b) FORTUNE is registered under Reg. No. 3418328 in International Class 35 for “Providing information in the field of economic forecasting and analysis via the Internet” and in International Class 36 for “Providing information in the field of stocks, bonds, investments, stock and bond indexes, financial markets, corporate and personal finance via the Internet”;

(c) FORTUNE is registered under Reg. No. 3,249,235 in International Class 35 for “Business information in the field of companies, company rankings and business news; Business research and surveys; Collection, preparation, composition, storage, processing, acquisition and provision of business information, data, statistics and indices; Providing information about commercial business and commercial information via the global computer network”;

(d) FORTUNE is registered under Reg. No. 634,608 in International Class 16 for “biweekly magazine”;

(e) FORTUNE is registered under Reg. No. 973,437 in International Class 16 for “biweekly magazine”;

(f) FORTUNE (Stylized) is registered under Reg. No. 1,711,702 in International Class 16 for “general interest magazines”;

(g) FORTUNE 500 is registered under Reg. No. 1,368,907 in International Class 16 for “section of a magazine and annual directories listing information about the top 500 U.S. companies”;

(h) FORTUNE 500 is registered under Reg. No. 2,847,706 in International Class 36 for “Financial services in the nature of a stock index, namely, providing information on the performance of a select group of companies and their stocks; investment services in the field of stocks, mutual funds, options, futures and commodities; investment consultation services; and providing information on finance, stocks and investments by way of a global computer network”;

(i) FORTUNE SMALL BUSINESS is registered under Reg. No. 3,211,052 in International Class 35 for “Information in business matters; Providing an on-line computer database featuring trade information in the field of markets, technology, jobs and economy, and business; Providing consumer information in the field of automobiles and real estate; Providing information about commercial business and commercial information via the global computer network”;

(j) FORTUNE SMALL BUSINESS is registered under Reg. No. 3397563 in International Class 16 for “Magazines featuring business, finance and topics of general interest”;

(k) FORTUNE.COM is registered under Reg. No. 2,617,264 in International Class 42 for “providing an interactive online magazine about business, finance and related topics, via a global computer network”;

(l) FSB is registered under Reg. No. 2,422,253 in International Class 16 for “periodical publications, namely, magazines featuring information about business, economics and finance”;

(m) FSB is registered under Reg. No. 2,565,750 in International Class 35 for “Providing an on-line computer database featuring business information, namely, information on new business, economics, taxes, business management, and business technology”;

(n) IN STYLE is registered under Reg. No. 1,829,389 in International Class 16 for “general interest magazine”;

(o) INSTYLE is registered under Reg. No. 3,194,185 in International Class 16

for "Online information services, namely, providing information concerning celebrity lifestyles and events, entertainment news, fashion, beauty and culture, offered via a global computer network";

(p) INSTYLE is registered under Reg. No. 2,217,608 in International Class 42 for "computer services, namely, providing interactive on-line magazines in the field of fashion, beauty, culture, and lifestyles";

(q) INSTYLE In Bar Logo is registered under Reg. No. 3398244 in International Class 16 for "General feature magazines; Magazines featuring celebrity lifestyles and events, entertainment news, fashion, beauty and culture";

(r) INSTYLE LOGO is registered under Reg. No. 1,851,469 in International Class 16 for "general interest magazine";

(s) INSTYLE.COM is registered under Reg. No. 2,564,142 in International Class 41 for "On-line information services, namely, providing information concerning celebrity lifestyles and events, entertainment news, fashion, beauty and culture, offered via a global computer network";

(t) MONEY is registered under Reg. No. 3,060,419 in International Class 16 for "general interest magazine";

(u) MONEY is registered under Reg. No. 1,001,798 in International Class 16 for "periodical publications";

(v) MONEY LOGO (REVISED) is registered under Reg. No. 2,331,567 in International Class 38 for "providing interactive on-line information services accessed by way of a global computer network in the field of finance and investments";

(w) PEOPLE EN ESPANOL is registered under Reg. No. 3442751 in International Class 41 for "Online information services, namely, providing information concerning celebrity lifestyles and events, popular culture, entertainment news, current events, fashion, beauty, culture and human interest stories, offered via a global computer network";

(x) PEOPLE EN ESPANOL is registered under Reg. No. 2,182,518 in International Class 16 for "general interest magazines";

(y) PEOPLE LOGO is registered under Reg. No. 2,697,635 in International Class 16 for "general interest magazines";

(z) PEOPLE.COM is registered under Reg. No. 2,522,247 in International Class 42 for "interactive online services, namely, providing an online magazine featuring information about celebrities, current events and related topics";

(aa) REAL SIMPLE is registered under Reg. No. 2,470,211 in International Class 16 for "general interest magazine" and in International Class 42 for "computer services, namely, providing on-line general interest magazines; computer services, namely, providing on-line magazines in the fields of clothing, fashion, food, cooking, dining, shopping, work, careers, family, children, finance, and investments";

(bb) SI FOR KIDS is registered under Reg. No. 1,863,715 in International Class 16 for "periodical publications; namely, general interest magazines";

(cc) SPORTS ILLUSTRATED is registered under Reg. No. 754,203 in International Class 16 for "weekly magazine";

(dd) SPORTS ILLUSTRATED is registered under Reg. No. 1,969,741 in International Class 42 for "Computer services, namely interactive online services providing information in the field of sports";

(ee) SPORTS ILLUSTRATED FOR KIDS is registered under Reg. No. 1,578,963 in International Class 16 for "periodical publications, namely general interest magazine";

(ff) SPORTS ILLUSTRATED KIDS is registered under Reg. No. 3422999 in International Class 16 for "Books in the field of sports; Magazines featuring sports and topics of general interest; Posters";

(gg) SPORTS ILLUSTRATED KIDS LOGO is registered under Reg. No. 3423012 in International Class 16 for "Books in the field of sports; Magazines featuring sports and topics of general interest; Posters";

(hh) STYLE WATCH is registered under Reg. No. 2,725,720 in International

Class 16 for “periodical publications, namely, general interest magazines featuring information about fashion, lifestyles and related subjects”;

(ii) TIME is registered under Reg. No. 3,223,154 in International Class 16 for “General feature magazines; Magazines featuring news, current events, popular culture, editorial commentary and business information”;

(jj) TIME is registered under Reg. No. 2,154,831 in International Class 42 for “computer services, namely, providing interactive on-line magazine in the field of news and general interest information; computer services, namely, providing an interactive computer database in the field of news and general interest information”;

(kk) TIME and Red Border Cover Design is registered under Reg. No. 810455 in International Class 16 for “weekly magazine”;

(ll) TIME and Red Border Cover Design is registered under Reg. No. 629122 in International Class 16 for “weekly magazine”;

(mm) TIME Logo is registered under Reg. No. 1,058,390 in International Class 16 for “news magazine, and other publications published from time to time-namely, books and pamphlets”; and

(nn) Time Red Border Cover Design is registered under Reg. No. 1,106,087 in International Class 16 for “weekly magazine”.

4. Time is the owner of common law trademark rights in its magazine titles as well, based on its use of its marks in commerce over the period of many years, and the wide recognition of those marks by consumers as an indicator of the source of Time’s products.

5. In addition, Time has rights to the trade dress of its magazines. Each magazine has a distinctive cover with a stylized logo that functions as a source indicator to consumers, and is non-functional. The Infringing Website displays the covers of all of the above listed magazines on the website, infringing Time’s trade dress in those covers.

6. Southern Living, Inc. is a wholly-owned subsidiary of Time. Southern Living, Inc. also owns trademark rights in the titles of its magazines. Specifically, Southern Living, Inc.

holds the following trademark registrations for its magazines:

- (a) COOKING LIGHT is registered under Reg. No. 1,586,703 in International Class 16 for “magazine containing information on healthful lifestyles”;
- (b) COOKING LIGHT is registered under Reg. No. 2,434,844 in International Class 42 for “computer services, namely providing interactive online magazine and information services in the field of healthful lifestyles”;
- (c) COOKING LIGHT EAT SMART, BE FIT, LIVE WELL is registered under Reg. No. 2,583,662 in International Class 16 for “magazine pertaining to information on healthful lifestyles”;
- (d) SOUTHERN LIVING is registered under Reg. No. 2,440,291 in International Class 42 for “Computer services, namely providing interactive online magazine and information services in the field of homes, gardening, food, entertainment, travel, and features of special interest for people living in the South”;
- (e) SOUTHERN LIVING is registered under Reg. No. 1,322,151 in International Class 16 for “Periodical magazine dealing with homes, building, gardening, landscaping, foods, entertainment, travel, recreation, and features of special interest for southerners”; and
- (f) SOUTHERN LIVING is registered under Reg. No. 847,643 in International Class 16 for “periodical publication-namely, a magazine published monthly”.

7. Southern Living, Inc. is the owner of common law trademark rights in its magazine titles as well, based on its use of its marks in commerce over the period of many years, and the wide recognition of those marks by consumers as an indicator of the source of Southern Living, Inc.’s products.

8. In addition, Southern Living, Inc. has rights to the trade dress of its magazines. Each magazine has a distinctive cover with a stylized logo that functions as a source indicator to consumers, and is non-functional. The Infringing Website displays the covers of all of the above listed magazines on the website, infringing Southern Living, Inc.’s trade dress in those covers.

9. Southern Accents, Inc. is a wholly-owned subsidiary of Time. Southern Accents, Inc. also owns trademark rights in the titles of its magazines. Specifically, Southern Accents, Inc. holds the following trademark registrations for its magazines:

(a) COASTAL LIVING is registered under Reg. No. 2,233,877 in International Class 16 for “magazine featuring homes, cuisine, travel, furnishings, gardening, food, entertainment, arts, antiques, decorating and building”;

(b) COASTAL LIVING is registered under Reg. No. 2,423,043 in International Class 42 for “computer services, namely providing interactive online magazines in the field of homes, cuisine, travel, furnishings, gardening, food, entertainment, arts, decorating and building; providing on-line information about gardening, preparation of cuisine and interior decorating including home furnishings”;

(c) SOUTHERN ACCENTS is registered under Reg. No. 1,103,041 in International Class 16 for “magazine published quarterly dealing with Southern interiors and gardens”; and

(d) SOUTHERN ACCENTS is registered under Reg. No. 2,467,154 in International Class 42 for “computer services, namely providing interactive online magazine and information services in the field of home interiors and gardens”.

10. Southern Accents, Inc. is the owner of common law trademark rights in its magazine titles as well, based on its use of its marks in commerce over the period of many years, and the wide recognition of those marks by consumers as an indicator of the source of Southern Accents, Inc.’s products.

11. In addition, Southern Accents, Inc. has rights to the trade dress of its magazines. Each magazine has a distinctive cover with a stylized logo that functions as a source indicator to consumers, and is non-functional. The Infringing Website displays the covers of all of the above listed magazines on the website, infringing Southern Accents, Inc.’s trade dress in those covers.

12. Essence Communications Inc. is a wholly-owned subsidiary of Time. Essence

Communications Inc. also owns trademark rights in the titles of its magazines. Specifically, Essence Communications Inc. holds the following trademark registrations for its magazines:

(a) ESSENCE is registered under Reg. No. 1,131,774 in International Class 16 for “magazine concerning matters of general interest to women”.

13. Essence Communications Inc. is the owner of common law trademark rights in its magazine titles as well, based on its use of its marks in commerce over the period of many years, and the wide recognition of those marks by consumers as an indicator of the source of Essence Communications Inc.’s products.

14. In addition, Essence Communications Inc. has rights to the trade dress of its magazines. Each magazine has a distinctive cover with a stylized logo that functions as a source indicator to consumers, and is non-functional. The Infringing Website displays the covers of all of the above listed magazines on the website, infringing Essence Communications Inc.’s trade dress in those covers.

15. Entertainment Weekly Inc. is a wholly-owned subsidiary of Time. Entertainment Weekly Inc. also owns trademark rights in the titles of its magazines. Specifically, Entertainment Weekly Inc. holds the following trademark registrations for its magazines:

(a) ENTERTAINMENT WEEKLY is registered under Reg. No. 1,678,451 in International Class 16 for “periodical publications; namely, general interest magazines dealing with videos, movies, television shows, records, books and celebrities”; and

(b) ENTERTAINMENT WEEKLY is registered under Reg. No. 2,001,003 in International Class 41 for “interactive online services accessed via computer providing information on movies, television, publishing, music, multi-media, videos, personalities, and celebrities”.

16. Entertainment Weekly Inc. is the owner of common law trademark rights in its magazine titles as well, based on its use of its marks in commerce over the period of many years, and the wide recognition of those marks by consumers as an indicator of the source of Entertainment Weekly Inc.’s products.

17. In addition, Entertainment Weekly Inc. has rights to the trade dress of its magazines. Each magazine has a distinctive cover with a stylized logo that functions as a source indicator to consumers, and is non-functional. The Infringing Website displays the covers of all of the above listed magazines on the website, infringing Entertainment Weekly Inc.'s trade dress in those covers.

18. TI Golf Holdings Inc. is a wholly-owned subsidiary of Time. TI Golf Holdings Inc. also owns trademark rights in the titles of its magazines. Specifically, TI Golf Holdings Inc. holds the following trademark registrations for its magazines:

- (a) GOLF is registered under Reg. No. 2,752,640 in International Class 16 for "General interest magazines";
- (b) GOLF (STYLIZED) is registered under Reg. No. 2,349,798 in International Class 16 for "Magazine published monthly featuring golf information";
- (c) GOLF MAGAZINE is registered under Reg. No. 1,521,775 in International Class 16 for "magazine published monthly"; and
- (d) GOLF MAGAZINE (STYLIZED) is registered under Reg. No. 2,382,518 in International Class 16 for "magazine published monthly featuring information in the field of golf, golf instructions, golf club services, golf courses, golf entertainment news and golf tournaments".

19. TI Golf Holdings Inc. is the owner of common law trademark rights in its magazine titles as well, based on its use of its marks in commerce over the period of many years, and the wide recognition of those marks by consumers as an indicator of the source of TI Golf Holdings Inc.'s products.

20. In addition, TI Golf Holdings Inc. has rights to the trade dress of its magazines. Each magazine has a distinctive cover with a stylized logo that functions as a source indicator to consumers, and is non-functional. The Infringing Website displays the covers of all of the above listed magazines on the website, infringing TI Golf Holdings Inc.'s trade dress in those covers.

21. Health Publishing, Inc. is a wholly-owned subsidiary of Time. Health Publishing, Inc. also owns trademark rights in the titles of its magazines. Specifically, Health Publishing,

Inc. holds the following trademark registrations for its magazines:

- (a) HEALTH is registered under Reg. No. 1,961,337 in International Class 16 for “general interest magazine”; and
- (b) HEALTH is registered under Reg. No. 2,400,337 in International Class 42 for “computer services, namely, providing on-line magazine in the field of general interest”.

22. Health Publishing, Inc. is the owner of common law trademark rights in its magazine titles as well, based on its use of its marks in commerce over the period of many years, and the wide recognition of those marks by consumers as an indicator of the source of Health Publishing, Inc.’s products.

23. In addition, Health Publishing, Inc. has rights to the trade dress of its magazines. Each magazine has a distinctive cover with a stylized logo that functions as a source indicator to consumers, and is non-functional. The Infringing Website displays the covers of all of the above listed magazines on the website, infringing Health Publishing, Inc.’s trade dress in those covers.

24. This Old House Ventures, Inc. is a wholly-owned subsidiary of Time. This Old House Ventures, Inc. also owns trademark rights in the titles of its magazines. Specifically, This Old House Ventures, Inc. holds the following trademark registrations for its magazines:

- (a) THIS OLD HOUSE is registered under Reg. No. 1,992,003 in International Class 16 for “magazine on the subject of home renovation, improvement, and design”;
- (b) THIS OLD HOUSE is registered under Reg. No. 3,145,567 in International Class 37 for “Providing on-line information in the field of building construction, renovation, and improvement”; and
- (c) THIS OLD HOUSE LOGO is registered under Reg. No. 2,238,871 in International Class 16 for “magazine on the subject of home construction, renovation, improvement and design”.

25. This Old House Ventures, Inc. is the owner of common law trademark rights in its magazine titles as well, based on its use of its marks in commerce over the period of many years, and the wide recognition of those marks by consumers as an indicator of the source of This Old House Ventures, Inc.'s products.

26. In addition, This Old House Ventures, Inc. has rights to the trade dress of its magazines. Each magazine has a distinctive cover with a stylized logo that functions as a source indicator to consumers, and is non-functional. The Infringing Website displays the covers of all of the above listed magazines on the website, infringing This Old House Ventures, Inc.'s trade dress in those covers.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 14, 2008

A handwritten signature in black ink, appearing to read "Paul A. Lee", is written over a horizontal line.

Paul A. Lee